

PART 2 FINANCIAL RESOURCES

2.1 Financial resources requirement

- (1) A licensee must, at all times, maintain ~~the following financial resources of –~~
- (a) for the designated trustee or designated custodian of an open-ended collective investment scheme, **net assets of** not less than £4,000,000;
 - ~~(i) net assets of £4,000,000; and~~
 - ~~(ii) minimum professional indemnity insurance cover of either £300,000 or three times the total revenue, whichever is greater, the excess of which must not exceed 20% of the total insured;~~
 - (b) for the designated administrator of a collective investment scheme, **not less than (i) net assets of not less than £100,000 or the amount net assets** equal to the expenditure-based requirement as shown by the latest annual financial statements submitted to the Commission, whichever is greater; **and**
 - ~~(ii) minimum professional indemnity insurance cover of either £300,000 or three times the total revenue, whichever is greater, the excess of which must not exceed 20% of the total insured;~~
 - (c) in the case of an entity which does not fall under (a) or (b) but is licensed, authorised, or registered under –
 - (i) The Banking Supervision Law¹;
 - (ii) The Insurance Managers and Insurance Intermediaries Law²;

¹ The Banking Supervision (Bailiwick of Guernsey) Law, 2020, Order In Council No. XX of 2020.

² The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, Order In Council No. XXII of 2002.

- (iii) The Insurance Business Law³; or
- (iv) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. Law⁴,

capital and solvency requirements as set out under the relevant law and where confirmed in writing by the Commission, ~~those financial resources as set out under the relevant law;~~

- (d) in the case of a licensee with no physical presence, meaning staff and premises, in the Bailiwick ~~who~~ **which** does not fall under (a), (b), or (c), **net assets** the higher of -
 - (i) £10,000; or
 - ~~(ii) net assets and professional indemnity insurance cover~~ (ii) **an amount** which is, in the opinion of its directors, sufficient to meet its commitments and to withstand the risks to its business;
 - (e) in all other cases,
 - ~~(i) net assets of~~ **not less than** £25,000 or **the amount** ~~net assets~~ equal to the expenditure-based requirement, whichever is greater. ~~and~~
 - ~~(ii) minimum professional indemnity insurance cover of £250,000 or three times total revenue, whichever is the greater, the excess of which must not exceed 20% of the total insured.~~
- (2) Licensees must follow the framework for the calculation of financial resources requirements as set out at Schedule 1.

³ The Insurance Business (Bailiwick of Guernsey) Law, 2002, Order In Council No. XXI of 2002.

⁴ The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020, Order In Council No. XIX of 2020.

PART 2A INSURANCE ARRANGEMENTS

2A Professional indemnity insurance

- (1) A licensee must maintain professional indemnity insurance (“PII”) cover which is commensurate with the size and nature of its business.

Guidance

For the avoidance of doubt, the PII policy can be in the form of commercial insurance as commonly seen in the market or captive insurance. Both forms are accepted given that the risk is transferred from the licensee or its group. The policy may or may not have the term “professional indemnity insurance” included in its description.

The consideration by a licensee of its insurance requirements should be clearly documented at local board or senior management level to demonstrate how the decision was made. The Commission expects all licensees, whether or not they are part of organisations with offices elsewhere, to consider the insurance requirements for the entities in the Bailiwick of Guernsey.

Where a local operation is part of a group and the local board or management do not consider the cover available to the Guernsey licensee to be adequate the Commission expects the board or management to make arrangements to maintain appropriate cover. This may include purchasing a separate policy for the local operation.

Minimum indemnity limit and excess of the PII policy

- (2) For the designated trustee or designated custodian of an open-ended collective investment scheme and the designated administrator of a collective investment scheme, the minimum indemnity limit **for any one claim and in the aggregate** must equal or exceed the greater of –

- (i) three times ~~total revenue~~ **relevant income**; or
- (ii) ~~£300,000~~ **£1,000,000**,

where the relevant income shall be based on the latest audited financial statements or, for new businesses, estimated figure for the first year.

~~The excess of the PII policy must not exceed 20% of the total insured.~~

- (3) ~~In the case of a~~ A licensee with no physical presence, meaning staff and premises, in the Bailiwick **which** does not fall under **rule 2A(2)**, **must maintain PII cover** which is, in the opinion of its directors, sufficient to meet its commitments and to withstand the risks to its business.

- (4) In all other cases, the minimum indemnity limit **for any one claim and in the aggregate** must equal or exceed the greater of –

- (i) three times ~~total revenue~~ **relevant income**; or

(ii) £250,000,

where the relevant income shall be based on the latest audited financial statements or, for new businesses, estimated figure for the first year.

~~The excess of the PII policy must not exceed 20% of the total insured.~~

- (5) For the purpose of Rule 2A, “relevant income” means income from controlled investment activity and any other regulated activity, where applicable.

Guidance

The relevant income should be based on the latest audited financial statements at the time of PII renewal.

For the avoidance of doubt, insurance cover based on a prior year’s audited financial statements does not need to be amended before the next annual renewal following the release of the following year’s financial statements. However, a licensee should consider whether to arrange additional cover in the event that the audited financial statements show a material increase in relevant income.

Income from “other regulated activity” will include income from regulated activity within the meaning of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. Law, where applicable.

- (6) Notwithstanding Rule 2A(2), (3) and (4) above, a licensee is not required to have aggregate insurance cover exceeding £10,000,000 provided that the Board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board assessment if requested by the Commission.

Guidance

For the avoidance of doubt, Rule 2A(6) is also applicable to a licensee which is a part of a group and relies on PII cover provided by the group. For this case, the consideration should ensure that the group PII policy is appropriate for the licensee.

Guidance

Excess: Consideration should be given to the excess per claim on the PII policy and whether it is appropriate for the licensee taking into account its financial position. Specifically, the licensee should ensure that it will be able to fund the excess in the event that a claim is made on the PII policy

- (7) Where the licensee also carries out unregulated activities, the licensee must consider whether the minimum indemnity limit of its PII policy and scope of the PII cover are appropriate for its businesses as a whole, taking into account possible claims that may also be arise from unregulated businesses.
- (8) Where a licensee also holds a licence under another Regulatory Law the licensee should meet the PII rules under whichever of the respective regimes requires the higher (or highest) aggregate minimum indemnity limit, unless otherwise instructed by the Commission.

Scope of cover

- (9) A licensee must maintain at all times PII cover for –
 - (a) negligence, errors, or omissions by the licensee or its employees;
 - (b) any liability for the dishonest or fraudulent acts of employees which may fall on the licensee;
 - (c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;
 - (d) liabilities which the licensee might incur in any jurisdiction in which it should reasonably foresee that it may be held liable for damages and costs;
 - (e) where relevant, ombudsman awards; and
 - (f) legal defence costs.

Guidance

Rule 2A(9)(a) – The Law defines “employee” as “*an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment*”. For the purposes of this rule, the PII policies should therefore cover current and former employees* and a person under contract to perform services or duties to or on behalf of the licensee.

*Time limitation may apply to the period of cover for former employees, depends on the date after they ceased to be employed.

Rule 2A(9)(b) – In meeting this rule, some licensees may rely on a different insurance instrument for indemnity against such liabilities, provided that the licensee is satisfied with such insurance arrangement. PII policy wordings vary greatly, licensees should consider whether its PII policy provides the required scope of cover. For instance, these may be covered under “Crime”, “Fraud” or “Fidelity” under its policy. Some PII policies may contain limitation on “dishonest or fraudulent acts” such as a carve out on deliberate dishonest acts. Where there is such limitation or exception, the licensee should assess whether the policy is considered appropriate for its business.

Rule 2A(9)(e) applies to licensees which carry out activities within scope of the Channel Islands Financial Ombudsman.

Captive Insurance

- (10) Where a licensee relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man or a county which is a full member of the OECD.

Guidance

Notifications relating to PII: Principle 10 of the Principles of Conduct of Finance Business states that “A financial institution should deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning the financial institution which might reasonably be expected to be disclosed to it.”. In this regard, when a licensee makes a notification under a PII policy to their insurer, the licensee should consider whether a notification should also be made to the Commission.

PART 5 GENERAL PROVISION

5.1 interpretation

“adjustments” means –

- (a) deductions for non-current assets which includes any investment in a subsidiary, debtors arising from sales or other transactions to associates, any deficiencies where the liabilities of a subsidiary of a licensee exceed its assets, and any other assets specified, in writing, by the Commission; ~~and~~
- (b) additions for creditors arising from purchases or other transactions from associates and other liabilities specifically permitted in both cases, in writing, by the Commission; ~~and~~
- (c) deduction of the amount of the excess on the licensee’s PII policy.